IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 4343 OF 2005

Shailesh H. Bajaj ...Applicant

Versus

The State of Maharashtra & Anr ...Respondents

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Mr. Z. Andhyarujina i/b P.D. Desai, Advocate for Applicant.
Mr. Sanjay Parab, Adv.for Respondent No.2.
Ms. S.V. Gajare, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 20TH SEPTEMBER, 2005

P. C.:-

1. Heard the learned advocate for the applicant i.e. original accused, learned advocate for the respondent No.2 i.e. original complainant the learned A.P.P. for the State.

2. The applicant is facing prosecution under Section 138 of Negotiable Instruments Act in C.C. Nos. 303/S/2003 and 304/S/2002. In the said cases, process have been issued against the applicant by the learned Metropolitan Magistrate, 16th Court, at Ballard Pier, Mumbai. Now the said cases have been transferred to the learned M.M. 33rd Court at Ballard Pier, Mumbai and re-numbered as 4614/SS/2005 and 4615/SS/2005.

3. The applicant had preferred an application for

recall of process before the learned Magistrate in respect of C.C. No. 4614/SS?2005. The said application came to be rejected by order dated 24.3.2004. Being aggrieved by the said order, revision came to be preferred challenging the order of the Magistrate rejecting the application for recall of process. The learned Sessions Judge dismissed the said revision. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal (2004) 7 SCC 338,** it is clear that the Magistrate has no power to recall the process, hence, no fault can be found with the order of the learned Magistrate in rejecting the application for recall of process. Hence, I am not inclined to interfere with the said order. As the learned Magistrate could not have recalled the process, I am also not inclined to interfere with the order of the learned Sessions Judge dismissing the revision.

4. However, in view of the decision of this Court in the case of **V.K. Jain & Ors. Vs. Pratap V. Padode and Anr, reported in 2005(3) Mh.L.J. 778,** it is clear that revision is maintainable against the order of the Magistrate issuing process.

5. Hence, in view of the decision of this Court in the case of V.K. Jain (supra) in my opinion, the applicant has an efficacious remedy of preferring

revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicant prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

6. Liberty is granted to the applicant to prefer revision before the concerned Sessions Court. The learned advocate for the applicant states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today in both the cases as mentioned above. The learned advocate for the respondent No.2 i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

7. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

8. Application is disposed of.

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